IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

CRL.A.No. 446 of 2005(C)

CC.21/2002 of ENQUIRY COMMR. & SPL. JUDGE, TRIVANDRUM
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APPELLANT: ACCUSED:

A. SASIDHARAN, S/O. THAMPI,
BIJU BHAVAN, MARUTHOOR, VATTAPPARA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.B.PREMOD

RESPONDENTS: COMPLAINANT:

STATE OF KERALA (REP. BY DY.S.P. VACB.,
S.I.V. TRIVANDRUM-V.C.6/99) REP. BY THE STATE
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. Appeal No. 446 OF 2005

Dated: 05-11-2007

J U D G M E N T

The appellant who was the sole accused in C.C.No.21/02 on the file of the court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram for offences punishable under sections 7 and 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the P.C. Act" for short) challenges the conviction entered and the sentence passed by the said Court for the aforesaid offences.

THE PROSECUTION CASE

2. The case of the prosecution can be summarised as follows:-

The appellant/accused was the Head Constable of Venjaramoodu Police Station and thus a public servant. PW1 (Rajendran) was an accused in Crime No.17/99 of the said police station. For deleting the name of PW1 from the array of accused in Crime No.17/99, the accused herein demanded a bribe of Rs.500/- from PW1 on 8.3.99 from the shop building under the construction

of PW1 at Vembayam. To the said demand, PW1 said that he would pay a sum of Rs.300/- on the next day to which the accused agreed. On 9.3.99 PW1 went to the Vigilance and Anti Corruption Bureau, SIU, Thiruvananthapuram and reported the matter to PW8 (Dy.S.P.) who recorded the statement of PW1 and registered a case as Crime No.6/99. Ext.P16 is the F.I.R.. PW8 then arranged a trap. A requisition was given to the Director of Industries and Commerce for deputing two gazetted officers for assisting PW8 in conducting the trap. Accordingly, PW2 an Assistant Director and CW2, another Gazetted Officer reported at the office of PW8 at 3 p.m. on 9.3.99 In the presence of those witnesses, PW1 the complainant produced three currency notes of Rs.100/- denomination (MO1 series) before PW8 who noted the numbers of the currency notes and put his initials on them. Phenolphthalein powder was then smeared on MO1 by Head Constable No.6232. The tainted notes were then handed over to PW1 under Ext.P3 mahazar with a direction to give the same to the accused on demand. PW1 was asked to give a particular signal as and when the accused accepted the bribe. The trap team consisting of PW1, PW2, CW2, PW8 and others, then proceeded to Venjaramoodu. After reaching the vicinity of the Venjaramoodu police station, PW1 was sent to the police station for the purpose of giving bribe to the accused on demand and the

others waited outside. After some time, PW1 returned and informed that the accused was not available in the police station. PW8 then took back MO1 series from PW1 and kept it in his safe-custody with a direction to PW1 to appear before PW8 on the next day. Accordingly, on 10.3.99 PW1 appeared before PW8 who handed over MO1 series to PW1. On the requisition given to the Joint Commissioner, Commercial Taxes, Thiruvananthapuram, two other gazetted officers(PW3 and CW5) reported before PW8 to assist him in the investigation of the case. In their presence, PW1 produced MO1 series before PW8. The currency notes were again smeared with phenolphthalein powder by Head Constable No.6232 and were entrusted to PW1 under Ext.P4 mahazar with a direction to give the same to the accused on demand. As was done on the previous day, PW1 was asked to give a signal when the accused had accepted the bribe. The trap team consisting of PW1, PW3, CW5, PW8 and others proceeded to Venjaramoodu. PW1 was then sent to the police station with a direction to give MO1 series to the accused on demand. After some time, PW1 came out and showed the pre-arranged signal. Thereupon the team headed by PW8 went to the room of the accused who was occupying his seat. PW8 introduced himself and others to the accused. When PW8 asked the accused about the currency notes received by him from PW1, the accused

replied that he had not received any money and that PW1 had thrust the currency notes inside his table drawer. PW1 was asked whether the accused had accepted the tainted notes. He replied that the accused did not receive the currency notes in his hand and, therefore, he had placed the same inside the drawer of the table of the accused. Then the fingers of PW8 were dipped in lime water taken in a glass tumbler. There was no colour change to the liquid or on the fingers of PW8 indicating that his hands were not smeared with the detecting powder. A sample of the said solution was taken and sealed. Then the fingers of both the hands of the accused were dipped in lime water taken in another glass tumbler. There was no colour change on the fingers or in the lime water so taken. A sample of the said solution was also taken and sealed. Then under the instructions of PW8, PW3 opened the drawer of the table of the accused and recovered MO1 series from it. The numbers on MO1 series were verified with those recorded in Ext.P4 pre-trap mahazar and it was confirmed that they were the very same notes bearing the initials of PW8 and that the numbers were tallying. When MO1 series were dipped in lime water taken in another glass tumbler, the colour of the solution and the dipped portion of MO1 series turned pink. Sample of the resultant solution was also separately taken and sealed. When lime water was sprinkled inside the table drawer

of the accused, the colour of Ext.P6 paper found inside the drawer turned pink. Ext.P5 is the post-trap mahazar prepared recording as to what transpired there. The accused was arrested by PW8. Since the accused had demanded Rs.500/- from PW1 and in pursuance of the said demand had accepted Rs.300/- from PW1 as gratification other than legal remuneration as a reward for deleting the name of PW1 from the array of accused in Crime No.17/99 of Venjaramoodu Police Station, the accused has thereby committed an offence punishable under section 7 of the P.C. Act. It was by abusing by his position as a public servant that the accused demanded Rs.500/- and since in pursuance of the said demand he had accepted Rs.300/- from PW1 on 10.3.99 the accused has thereby committed an offence under section 13(1)(d) of the P.C. Act and punishable under section 13(2) of the said Act.

THE TRIAL

3. On the accused pleading not guilty to the charge framed against him by the court below for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 9 witnesses as PWs 1 to 9 and got marked 21 documents as Exts.P1 to P21 and 4 material objects as MOs 1 to 4.

4. After the close of the prosecution evidence, the accused

was examined under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He had the following to submit before the court below:-

At a time when he was not in his seat in the Police Station and while he was making a phone call from the room of the Sub Inspector, currency notes were treacherously placed in his table drawer with a view to falsely implicate him and cause harm to him. He has not demanded or received any money from PW1. This is a false case.

THE CONVICTION

5. The accused did not adduce any defence evidence when called upon to do so. The learned Special Judge after trial, as per judgment dated 21.2.2005 found the appellant guilty of the offences charged against him and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs.3,000/- and on default to pay the fine, to suffer simple imprisonment for one month for the offence under section 7 of the P.C. Act. For the conviction under section 13(1)(d) of the P.C. Act, he was sentenced to rigorous imprisonment for one year and to pay a fine of Rs.5,000/- and on default to pay the fine, to suffer simple imprisonment for two

months. The substantive sentences were directed to run concurrently. It is the said judgment which is assailed in this appeal by the accused.

6. I heard Advocate Sri.B.Premod, the learned counsel appearing for the appellant and Sri.P.N.Sukumaran, the learned Public Prosecutor.

7. The only point which arises for consideration in this appeal is as to whether the conviction entered and the sentence passed against the appellant are sustainable or not.

The point:

THE PROSECUTION WITNESSES

8. PW1 (Rajendran alias Raju Panicker) is the de facto complainant. He partially supported the prosecution by deposing about the earlier demand but did not support the further case of the prosecution that the accused obtained from him a sum of Rs.300/- by way of bribe during the trap laid by PW8 on 10-3-1999.

PW2 (V.Vijayakumar) is the Assistant Registrar in the office of the Director of Industries and Commerce. He was a witness to the trap laid on 8.3.99 which was not successful due to the absence of the accused in his room.

PW3 (Vijayan Unnithan) was the Superintendent in the office of the Commissioner of Commercial Taxes. He was a witness

to the subsequent trap laid on 10.3.99. He supported the prosecution.

PW4 (T.Chandramohan) was the Sub Inspector of Venjaramoodu Police Station during the year 1999. It was he who registered crime Nos.17/99 and 18/99 which are a case and a counter of which PW1 the de facto complainant was the second accused in Crime No.17/99 registered for offences punishable under sections 323, 341 and 427 read with section 34 IPC.

PW5 (S.Ananthakrishnan, IPS) was the Superintendent of Police, Kollam who proved Ext.P12 sanction order dated 4.6.01 according sanction to prosecute the accused for the offences charged against him in this case.

P.W. 6 (L . Syamakumar) was the Station Writer of Venjaramoodu Police Station at the relevant time. He produced before the investigating officer Ext.P7 General Diary for the period from 28.2.99 to 13.3.99, Ext.P8 General Diary for the period from 19.1.99 to 28.2.99, Ext.P9 CD file of Crime No.17/99 and Ext.P10 CD file of Crime No.18/99.

PW7 (K.Maniyan) was the Administrative Assistant at the DTO, Thiruvananthapuram. It was he who had posted the accused as the Head Constable at Venjaramoodu Police Station.

PW8 (S.Krishnakumar) was the Dy.S.P. who laid the two

traps, one on 9.3.99 and the other on 10.3.99. He recorded Ext.P1 F.I. Statement of PW1. He also proved Exts P3 to P5 mahazar.

PW9 (C.P.Gopakumar) was the Dy.S.P. who seized the documents, prepared Ext.P21 Inventory, questioned PW5 and finally laid the charge.

THE DEFENCE CONTENTION

9. Advocate Sri.B.Premod, the learned counsel appearing for the appellant/accused made the following submissions before me in support of the appeal:-

The specific case of PW1 in Ext.P1 F.I.Statement is as follows:-

He is an agriculturist. He is at present constructing a shopping complex in his property situated near Vembayam junction after availing of a loan from the Kerala Financial Corporation. The construction of the ground floor is already completed and there are 13 rooms with shutters. On the northern side of the said building, there is a channel(thodu). The property adjacent to the said 'thodu' is the puramboke land belonging to the Minor Irrigation Department. It was after obtaining a valid licence from the Panchayat that he started the construction of the shopping complex. While so, at about 7 a.m. on 19.1.99 under the leadership of Sali (the Vembayam Ward Member), a few workers started putting up a

boundary wall in such a way as to obstruct the view of the shop rooms constructed by the complainant. The complainant preferred a complaint before Damodaran, the Chairman of the Panchayat Standing Committee. The said complaint was preferred by him at the shop of the said Damodaran at Pirappancode. He remained in the shop of Damodaran whereas Damodaran went to Vembayam in the car of the complainant and driven by his driver Premlal alias Lal. P.W.1 came to know that while at Vembayam, there was an altercation and a scuffle between the Panchayat Ward Member Sali and Damodaran over this issue. The Venjaramoodu police had registered a case and a counter case with Sali as well as Damodaran as the respective complainants. This complainant was not present at the scene of offence in the case in which Sali was the complainant. However, he was also falsely implicated as an accused in the said case which was registered by the present accused Sasi who was the Head Constable of Venjaramoodu Police Station. Those cases are pending investigation. In order to delete the name of the complainant from that case, the present accused demanded illegal gratification from this complainant. Eventhough this complainant told him that he was not present at the scene of occurrence, on 8.3.99 the accused again came to his building at Vembayam and demanded Rs.500/- as bribe and told him that if he

did not give the money, his name would not be deleted from the array of accused. He told the accused that since the building construction was going on, he was hard pressed for money and that he would give Rs.300/- to the accused who agreed to the same. This complainant had extreme mental anguish for falsely implicating him in that case and for the demand of bribe from him. Before giving the bribe money, he thought of informing the Vigilance Police. He has brought with him the sum of Rs.300/- intended to be given as bribe to the accused. It was at about 7 a.m. on 8.3.99 that the accused came to Vembayam and demanded the bribe.

As against the above version the specific case of the de facto complainant examined as P.W.1 is as follows:

His name was not deleted from the array of 2nd accused in Crime No. 17/1999 even after he told the accused head constable that he was not present at the alleged place of occurrence. At that time, the accused did not asked anything. After a few days, when he and the accused talked about the matter he entertained a belief that if he paid some bribe to the accused, he would be removed from the array of accused. On that day, he did not pay any money to the accused. After about one month of registration of the aforesaid criminal case, the accused came to him and asked for Rs. 500/- which he did not give. The accused had initially asked

for Rs. 1,000/- and had later revised his request by asking for Rs. 500/-. He did not give the money nor did he tell him the exact amount which he was willing to pay. He subsequently paid Rs. 300/- to the accused for the purpose of deleting him from the case. The accused would not have known that Rs. 300/- was the money which P.W.1 intended to give him. He has not stated in Ext.P1 F.I. statement that when he offered to pay Rs. 300/- to the accused the latter agreed to the same. He has not stated in Ext.P1 statement that as the building construction was going on there was difficulty for him to pay the amount demanded by the accused and that he would pay a sum of Rs. 300/- on the next day. (Witness declared hostile and Public Prosecutor permitted to cross-examine the witness). The accused had initially demanded Rs. 1,000/- and subsequently Rs. 500/-. When he gave Rs. 300/- the accused did not ask for it. The reason for his lodging a complaint before the Vigilance Police was due to the demand of money by the accused. The purpose for which the accused had demanded Rs. 1000/- and Rs. 500/- was to exclude P.W.1 from the criminal case. Officers were summoned to the vigilance office. He had entrusted Rs. 300/- with the Dy.S.P. of Vigilance. There were three 100 rupee notes which are marked as MO1 series. After smearing some powder it was given back to him and from the Vigilance office he

along with the trap party went to Venjaramoodu. On the first day, the accused was not there and then the trap party went on the 2nd day. P.W.1 went to the room of the accused with the tainted notes. But the accused was not in his room. He was making a phone call from the adjacent room. After making the phone call the accused came to his room and occupied his seat. Before the accused had returned to his room he had put MO1 series of notes in the drawer of the table which was lying open. It was with a view to remove the accused from the investigation of Crime No. 17 of 1999 that he did this to the accused. If such a case was taken against the accused, he knew for sure that there would be an enquiry against the accused. At the time when he inserted MO1 series of currency notes in the drawer of his table, the accused was not in his room.

P.W.2 who is one of the Gazetted Officers who was a witness to the unsuccessful trap conducted on 9-3-1999 has deposed that on coming to know that the trap was unsuccessful, the complainant was in a very angry mood as if he had some grouse against the accused. P.W.3 who is the other witness who supported the prosecution with regard to the successful trap conducted on 10-3-1999 has not actually

witnessed the complainant giving money to the accused. He has deposed that the instruction given to P.W.1 the complainant was to give the money in case the accused demanded the bribe. P.W.1 has no case that the accused demanded the bribe on 10-3-1999. The evidence of P.W.3 will show that when he entered the room the accused said that he had not taken any bribe and that somebody put the currency notes in the drawer of his table and went out. P.W.8 is the Dy.S.P. who conducted both the traps. He has not seen P.W.1 actually putting the marked notes in the table drawer of the accused. P.W.5 who is the Superintendent of Police, Kollam who accorded sanction to prosecute the accused.

P.W.5 was not the officer competent to issue sanction to prosecute the accused on 10-3-1999, that is the date of commission of the offence. Ext.P12 sanction order has been issued by P.W.5 on 4-6-2001 on which day the accused was not under the administrative control of P.W.5 who was the Superintendent of Police, Kollam. Moreover Ext.P12 sanction order does not satisfy the legal requirements. The object of the provision for prosecution sanction is that the authority giving sanction should be able to consider for itself the

evidence before it come to a conclusion that the prosecution in the circumstances be sanctioned or withheld. It should be clear from the form of sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution. This will be discernible from the sanction order itself unless it is proved by other evidence. ***(See Jeswanth Singh v. State of Punjab – AIR 1958 SC 124).*** What is stated in Ext.P5 pre-trap mahazar recorded by P.W.8 is that the accused told P.W.8 that P.W.1 put the notes in his drawer. But what P.W.3, the witness to the trap says is that the accused told them that somebody had put the notes in his drawer. The hands of the accused when subjected to the phenolphthalein test did not yield positive results thereby showing that he did not touch the notes. Mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused especially when the substantive evidence in the case is not reliable ***(Soorajmal v. Delhi Administration - AIR 1979 SC 1408).*** Mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Sec. 13 (1)(d)(i) of

the P.C. Act **(Sri. Subash Parbat Sonvane v. State of Gujrat – 2002 (5) SCC 86).** Mere demand of bribery by itself is not sufficient to establish an offence punishable under Section 5(1) (d) of the P.C. Act, 1947 the demand should be followed by an act on the part of the accused to suggest that he obtained the illegal gratification. Hence, it must be clearly established that pursuant to the demand the accused accepted the bribe money when the accused has come forward with a plea that the currency notes were put in his drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money was put in his drawer as illegal gratification. When it is admitted that any person who had access to the room of the accused could put anything in the drawer of the table of the accused, the evidence to the trap witness who deposed that the accused did not touch the currency notes but asked him to keep the same in his drawer, apart from suffering from infirmities was not corroborated, could not be readily accepted to convict the accused. (***See M.K. Harshan v. State of Kerala – 1995 Crl.L.J. 3978 SC) .*** This is a case in which the whole of the testimony of P.W.1 has been challenged and

P.W.1 stands clearly and totally discredited. In such a case the court should, as a matter of prudence discard his evidence in toto. ***(Sat Paul v. Delhi Administration – AIR 1976 SC 294).*** For establishing an explanation which the accused offers the accused is not required to prove his defence beyond reasonable doubt. He can establish the same by means of preponderance of probablities. ***(See Punjabrao v. State of Maharashtra – AIR 2002 SC 486).*** It is sufficient if the accused offers a probable explanation or defence and strict standard of proof is not necessary in this regard. ***(Man Sing v. Delhi Adminstration – AIR 1979 SC 1455).*** When the law raises a presmption against the accused and calls upon him to prove the contrary the quantum and degree of proof required to displace that presumption are just those required in a civil case and the standard is preponderance of probabilities. ***(See The State v. Minaketan Patnaik – 1952 Crl. L.J. 1393 (Orissa High Court).*** Before the acceptance of gratification or valuable thing can come within the ambit of Section 4 of the P.C. Act, 1947 it must be established that such acceptance was by a conscious mind . Hence, an unconscious or unknowing transmitter or bearer of a valuable thing or a

pecuniary advantage would not come within the scope of Sec. 5(1)(d) of P.C. Act, 1947 ***(Vide See M.C. Mitra v. The State - 1951 Crl.L.J. 1116 (Calcutta High Court).***

JUDICIAL RESOLUTION

10. I am afraid that I cannot agree with the defence contentions. It is true that P.W.1 who set the criminal law in motion by lodging a complaint before P.W.8, the Dy.S.P., Vigilance did not fully support the prosecution. He was evidently metamorphosing into a cunning performer in the witness box presumably with a view to salvage the accused. But then, notwithstanding the testimonial infidelity shown by P.W.1, the truth unwittingly came out of his mouth to say that after about one month of the registration of Crime No. 17 of 1999 against him and another, the accused (police head constable) came to him and asked for a bribe of Rs. 5,00/- which he did not give, that the amount which the accused had initially asked was Rs. 1000/- which he, however, reduced to Rs. 500/- and that he subsequently paid Rs. 300/- to the accused for the purpose of deleting him from the array of accused in Crime No. 17 of 1999. No doubt, this witness prevaricated to say that when he went inside the room of the

accused the latter was not there but was making a telephone call from the adjacent room. Much strain is not necessary to conclude that the feigned ignorance exhibited by P.W.1 was part of a sinister design to exculpate the accused.

11. It must be remembered that the venue for giving the bribe was not an ordinary public place accessible to all and sundry but a police station where an ordinary mortal fears to tread. Had it not been for the prior demand made by the accused P.W.1 would not have mustered sufficient courage to enter the precincts of a police station and placed the marked notes in the table drawer of the accused. No doubt, the marked notes were not personally handed over by P.W.1 to the accused but were put in the drawer of the table of the accused which was kept open. It is also true that the accused did not touch the notes with his hands. But the evidence of P.W.3, a Superintendent in the office of Commercial Taxes Commissioner and who was a witness to the trap credibly shows that the accused was in his room. P.W.3 who is an officer of Gazetted rank is an independent and disinterested witness and there is no reason as to why his testimony should not be accepted by the Court. ***(See State of A.P. v. B.***

Eswariah - AIR 1983 SC 353). According to P.W.3 when P.W.1 entered the room of the accused the latter was in the room. If so, P.W.1 had thrust the marked three hundred rupee notes into the drawer of the table of the accused at a time when the accused was in his room. Assuming that the currency notes were put in the drawer of the table of the accused without his consent or without any previous demand from the accused, then the normal involuntary reaction of the accused would have been to throw away the notes and rebuke P.W.1 for having had the audacity to enter into his room and try to bribe him. No such thing happened. Hence, the mere absence of phenolphthalein power on the hands of the accused does not , in the facts and circumstances of the case, militate against the prosecution case that P.W.1 had given the marked notes by way of bribe pursuant to a demand by the accused.

12. It is not necessary that the passing of money should be proved by direct evidence. It can be proved by circumstantial evidence also. ***(Vide Hazari Lal v. State (Delhi Administration - 1980 (2) SCC 390).*** Proof does not mean proof to rigid mathematical exactitude which is a virtual impossibility. Proof can only mean such evidence as would

induce a reasonable man to come to a particular conclusion. In reaching such conclusion the court can use the process of inference to be drawn from the proved facts. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business etc. viz-a-viz the facts of the particular case. ***(See Narasinga Rao v. State of A.P. - 2001 SCC Crl. 258) .***

13. The testimony of P.W.8 is also in complete accord with the prosecution case. P.W8 was the Dy.S.P. of Vigilance is the officer who laid the trap on 10-3-1999. His evidence clearly shows that after P.W.1 had put the marked notes in the drawer of the accused P.W.1 had shown the pre-arranged signal whereupon P.W.8 along with P.W.3, C.W.5 (the other gazetted officer) and the vigilance party rushed into the police station and that the accused was sitting at his table. His evidence further shows that after introducing themselves when P.W.8 asked the accused as to where he had placed the currency notes the accused told him that he did not accept the money

but P.W.1 had put the currency notes in his drawer and had gone out. The testimony of P.W.8 also shows that the accused was occupying his seat in his office. Even in the voluntary reaction of the accused in the form of reply to the question put to him by P.W.8., he had no case that the notes were put in his drawer by P.W.1 at a time when he was not in his office. Absolutely no sort of enmity or oblique motive has been attributed to P.W.8 so as to infer that he had an axe to grind against the accused. In ***Hassari Lal v. State (Delhi Administration) AIR 1980 SC 873*** the Apex Court observed as follows:-

> "Where the evidence of the Police Officer who laid the trap is found entirely trustworthy, there is no need to seek any corroboration. There is no rule of prudence , which has crystallized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration, but equally in the fact and circumstances of another case the Court may unhesitatingly accept the evidence of such an Officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there by any precedential guidance".

14. The trial Judge who had the unique advantage of seeing

the witnesses and assessing their credibility had absolutely no hunch or hesitation in accepting the testimony of the prosecution witnesses. On the evidence before Court, there was sufficient material from which it could justifiably be inferred that the appellant/accused was receiving gratification other than legal remuneration pursuant to a demand made in that behalf. The quantum of gratification was Rs. 300/- given to him in the form of marked notes. The prosecution can legitimately press into service the presumption under Sec. 20 of the P.C. Act to contend for the position that the gratification accepted by the accused was as a motive or reward for agreeing to delete the name of P.W.1 from the array of accused in Crime No. 17 of 1999 of Venjararamoodu Police Station. Since the above act of accepting gratification was for showing an official favour to P.W.1 by abusing the official position of the accused as the head constable of Venjaramoodu Police Station and by corrupt or illegal means and he has thereby obtained a pecuniary advantage without any public interest from P.W.1, the appellant has also committed an offence under Sec. 13 (1) (d) and punishable under Sec. 13 (2) of the P.C. Act.

15. Equally misconceived is the contention based on the alleged illegality of the sanction order. Ext.P12 sanction order satisfies the test laid down by the Apex Court in various rulings. I

am satisfied on the evidence that P.W.5 at the time of giving sanction was aware of the facts constituting the offences and had applied his mind to the same before according sanction. Going by sub section (1) of Section 19 of the P.C. Act the authority competent to grant sanction is that the authority who is competent to remove the public servant from office on the date of sanction. P.W.5 was admittedly the authority competent to remove the accused from his office on the date of Ext.P12 sanction order dated 4-6-2001. It is only when a doubt arises as to the authority competent to grant sanction that sub section 2 of Section 19 of the Act clarifies that the authority competent to grant sanction would be the authority who is entitled to remove the public servant from office at the time when the offence was allegedly committed. Since in this case there is no doubt regarding the authority of P.W. 5 to grant sanction as on the date of Ext.P12 order, sub section 2 Sec. 19 has no application. Hence the argument that since P.W.5 was not the authority competent to remove the accused from his post on the date of commission of the offence, he had no authority to grant the sanction is misconceived. Ext.P12 sanction order is, therefore, perfectly valid and in order.

16. The result of the foregoing discussion is that the conviction entered against the appellant/accused for offences under

Sections 17 and 13 (1) (d) of the P.C. Act is fully justified and no ground has been made out to dislodge the said conviction.

17. The sentence imposed on the appellant also cannot be said to be harsh or disproportionately excessive. I see little scope for interference with the sentence as well.

In the result, this appeal is dismissed confirming the conviction entered and the sentence passed against the appellant.

(V. RAMKUMAR, JUDGE)

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